1933

Department of LR Delhi

OFFICE Mr Agra

STATION Mainpuri,

No. 1434

1434

Dated 22. 5. 33

| To whom sent | Date | Initial |
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REGD. 20 MAY 1933

(SUBJECT.)

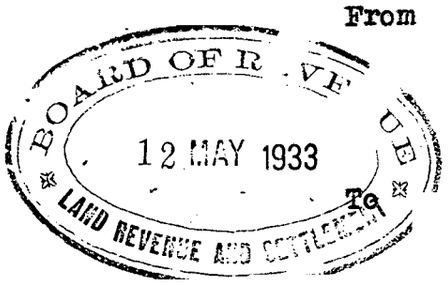
Appeal (Khemana) Suit of Mr Mainpuri Court - Suit No 136/33 - Sultan village - Agreement Deed ...

* Not to be filled in in the case of permanent records.

A 1475

Ref. A3. No. 1500-33. South Kanara Collector's Office,

Camp Udipi, dated 5th May 1933.




From

E. M. Gawne, Esquire, I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Suits - Puttur - Principal District Munsif's court - O.S.No. 136/33 - Assignment - Puttur village - S.No. 18/2 B - Refusal - defence.

I enclose a copy of the plaint in the above suit, which is for declaring that the orders of the Revenue Courts in assigning S.No. 18/2B of Puttur village to the 1st defendant are null and void and not binding upon the plaintiff and for directing delivery of its possession to the plaintiff free from the objections and claims of the 1st defendant.

2. The history of the case is as follows:-

S.No. 18/2 of Puttur village, corresponding to plots I, II and III in the sketches in p 3(c) D.R.4/1306 and p 5(B) D.R.5/1306 (enclosed), was, in those two darkhast cases, assigned by the Tahsildar of Puttur on land assessment 'Nelterige' to one Sheshamma, the plaintiff's predecessor-in-title and the then holder of the adjoining old kadim land S.No. 29/11, subject to the condition that she should vacate it, when required to do so without claiming compensation. The plot was being shown in village account No. A-II and assessment was being collected on it under 'Shivaijama' till Fasli 1334 as it lay within 22 yards of the road margin, it was in fasli 1335 deleted from that account and the records sent to the President, Dt. Board, for disposal. In 1928, the Dt. Board passed a resolution that it might leased out and actually began to collect rent from the 1st defendant and one Abbu Beari, but the Tahsildar objected to

this and submitted a report to the Collector in 1929 recommending the permanent assignment of the plot to the owner. The Collector, Mr. Wells, inspected the land and in consultation with the President, Dt. Board, accorded sanction for its outright assignment.

In D.R. 873/1339, the Tahsildar assigned the entire plot 18/2 to Pakru Beari (plaintiff) and rejected the claims of A.J. Sequeira (1st defendant) and Abbu Beari referred to above, on the ground that they were only chalgeni tenants. Of the two claimants only A.J.Sequeira (1st defendant) preferred an appeal and the Revenue Divisional Officer took a different view cancelled the Tahsildar's order and assigned the whole plot to the appellant, though the appeal was only in respect of the suit 18/2 B. In revision, my predecessor Mr. Hussain agreed with the Revenue Divisional Officer in so far as the assignment of the suit plot was concerned, but assigned the other portion viz., 18/2A to the plaintiff. In B.P.Rt.No. 1965 dated 12-4-32. the Board dismissed the plaintiff's 2nd revision petition as out of time. The plaintiff would not allow the matter to rest there. He sent a suit notice to the Collector. In this connection, the Government Pleader, Mangalore, was consulted as to whether, in view of the previous assignment, the land could be considered to have been absolutely at the disposal of Government at the time of its subsequent assignment, and also whether in view of a civil court judgment in a similar case (O.S.120/1929 on the file of the Dt.Munsif, Mangalore) upheld in appeal (A.S.72/31 on the file of the Dt.Cou the plaintiff had a case. As the Government Pleader's replies were favourable to Government, the suit notice was recorded by me viz., The assignments made in fasli 1306 did not confer on the plaintiff or his predecessor-in-title any permanent title. At settlement, the land was treated as assessed waste and the plaintiff's predecessor-in-title did not object to such entry in the accounts. The plaintiff's present claim is also long out of time. I do not, therefore think that the plaintiff has

sanctioned and the draft written statement (enclosed), prepared by the Vakil at Puttur and certified by the Government Pleader, Mangalore, to be in order, may be approved.

A copy of the plaint, dated 4-3-33 was received by me with the summons from the Dt. Munsif on 21-5-33. The suit stands posted to 16-6-33. The records noted in the margin are enclosed for reference.

*1. Collector's office file D.Dis.6958/31.
2. do. do. D.Dis.1586/30.
3. do. do. D.Dis.6144/32.
4. do. do. D.Dis.4937/29.
5. do. do. D.Dis.7044/32.
6. Puttur Divisional Office file D.Dis. 2578/31.
7. Puttur Taluk office file D.R.873/1339.
8. do. do. D.R. ~~4306~~ 4/1306
9. do do. D.R. 5/1306.

Your obedient servant,

For Collector.

9.5.33

In the Court of the District Munsif of Puttur.

O.S. 136/33.

Pakru Beary ... Plaintiff.

A.J.Sequeira and another ... Defendants

Written statement of 2nd defendant under Order VIII, Rule 1 Act V of 1908.

1. The Plaintiff's suit is frivolous and unsustainable at law.

2. The suit plot appertaining to S.No.18/2B of Puttur Kasba village was originally pure Government waste which was ----- temporarily assigned to one Sheshamma on condition that she should surrender the land to Government whenever required to do so, without claiming any compensation for any improvements and the assessment thereof under what is called 'Shivaijama' was being collected from the said Sheshamma.

3. Such temporary assignment did not confer any title or proprietary right on Sheshamma or Plaintiff her successor-in-title. This Defendant denies that this temporary assignment was treated as permanent assignment and assessment was collected as from permanent assignee as alleged in paragraph 4 of the plaint.

4. The order of the Tahsildar of Puttur in D.R.873/1339 assigning the suit plot and adjacent plot S.No.18/2A to ------- Plaintiff was found to be inequitable and so the Revenue ------ Divisional Officer of Puttur in appeal reversed the said order and assigned both the plots including the suit plot to 1st Defendant as he had made improvements by erecting buildings of the value of about Rs.650 and had been in occupation since a long time. But as his improvements and occupation were confined to S.No.18/2B the Collector in exercise of his revisional powers modified the order and assigned only the suit plot to 1st Defendant.

5. The assignment made by the Revenue authorities is just, equitable and in accordance with the Revenue rules. The Plaintiff has no

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6. This Defendant is not aware of and does not admit the tenancy between the first Defendant and Sheshamma as alleged in the plaint. The said Sheshamma had no right and was not competent to lease out Government land and such tenancy, if any, is not binding on Government

7. The assignment to Sheshamma being temporary and the land having been treated as assessed Government waste at the time of Settlement, the cancellation of the temporary grant on its surrender by Sheshamma was not necessary.

8. The Plaintiff has also no right to question the validity of the order in D.R.500/1340 on the file of the Tahsildar of Puttur. The land to the north of the suit plot was assigned to 1st Defendant as he was found entitled to the same by reason of improvements, long occupation and proximity to his house.

9. The suit as framed is not sustainable at law.

10. The civil courts have no jurisdiction to adjudicate upon the validity of the assignment made by the Revenue authorities according to rules.

11. The suit brought, without asking for a declaration of right is not sustainable at law and the court fee paid is not correct.

12. The Plaintiff is not entitled to possession of the plaint plot or any other relief.

13. All other allegations in the plaint not expressly admitted herein, are denied.

The suit against this Defendant may, therefore, be dismissed with costs.

South Kanara Collector's Office,
Camp Udipi, 9th May 1953.

For Collector.

9.5.53

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In the Court of the District Munsif of Puttur, South Kanara.

O.S.No.136/33.

Between:-

Pakru Beary — Plaintiff.

and

1. A. J. Sequeira
2. The Secretary of State for India in Council. — Defendants.

The above named Plaintiff begs to state as follows under Section 26 and Order 7 Rule 1 of Article V of 1908.

1. The Plaintiff is the son of Kamblabettu Sekunhi Beary, residing at Bolvar of Puttur village, Puttur Taluk, South Kanara District, the address for service of all processes and notices on him being as above.

2. The 1st Defendant is the son of Joseph Sequeira, residing at Bolvar, Puttur village, Puttur Taluk, South Kanara District. The second Defendant is represented by the Collector of South Kanara, Mangalore. The address for ----- service of all processes and notices is as stated above respectively.

3. The property appertaining to S.No.18/2B of Puttur village, 9 cents in extent, hereinafter called the suit plot along with other adjacent plots, was assigned to Plaintiff's predecessor-in-title one Sheshamma on Nelterige Beriz in D.R.Nos.4 and 5 of Fasli 1306. The said Sheshamma was ----- pattadar of the neighbouring land S.No.29/11 to which the assigned plots form the Kumki. She was enjoying her lands through her tenants one Kunhiachary and latterly the 1st Defendant who executed in her favour a lease deed on 5.5.1908 and has been holding over as tenant ever since.

4. Although the suit plot had been originally granted on Nelterige Beriz with the condition that the grantee executed an annual Muchalika to vacate it when called upon to do so without claiming improvement, the Government treated the grant as permanent assignment and did not, therefore, insist on the

annual Muchalika. The suit plot, however, was brought under Enclosure. II. of A Register after settlement and assessment was collected from Sheshamma and her successors-in-title up to Fasli 1350 as from permanent assignees.

5. The suit plot as well as the adjacent S.No.18/2A was assigned to the Plaintiff on darkhast in D.R.873/1339, although it was not usual to hold darkhast proceedings to convert Nelterige lands into Ayan lands. On the first Defendant appealing against the said order, the Plaintiff was deprived of both the plots on the ground that his Kumki rights over them must be considered to have been extinguished long ago. On revision to the Collector S.No.18/2A was restored to the Plaintiff but the Lower Court's order was confirmed with regard to the suit plot which remained and still remains in the possession of the 1st Defendant. The Plaintiff's appeal to the Board of Revenue in Madras was summarily dismissed as out of time.

6. The orders of the Revenue Courts negativing the Plaintiff's claim to the suit plot is contrary to well established principles and practice of Civil as well as Revenue Law, ~~equity~~ justice and equity and is null and void and not binding on Plaintiff. The suit plot ought to have been assigned to the Plaintiff for the same reasons, at least, if not for any other, as those that applied to the assignment of S.No.18/2A. Neither Sheshamma nor her successors-in-title have in any manner surrendered the Nelterige patta. The 1st Defendant was let into possession as a tenant and has admittedly remained as such without surrendering in any manner to his landlord. He cannot, therefore, set up any higher rights than what he had when he was let into possession as a tenant of Sheshamma. The Plaintiff who has acquired all the right, title and interest from Sheshamma's reversioner by a registered deed of sale dated 2-6-1930 is entitled to get back possession of the suit plot free from all objections and claims of the 1st Defendant.

7. The 1st Defendant may, at the time of eviction, be allowed to remove whatever improvements he has effected by repairing the former old house.

8. The 1st Defendant has further applied for and obtained on darkhast the land immediately to the north of the suit plot in D.R.500/1340 with regard to which the Plaintiff will seek redress separately. The Plaintiff is entitled to that plot also as the 1st Defendant must be deemed to have obtained it in his capacity as tenant holding over and so for the benefit of the landlord.

9. The Plaintiff has given notice to the 2nd Defendant as required by Sec.80 of the Civil Procedure Code and has received acknowledgment thereof dated 4-7-1932.

10. The cause of action for this suit arose on 12-4-1932 when the Board of Revenue dismissed the Plaintiff's appeal as out of time in Puttur village.

11. The value of the suit for the purposes of jurisdiction and Court fee is estimated at annas ten only on which a Court fee of annas eight is paid.

12. The Plaintiff therefore prays for a decree against the Defendants

| | Rs. | A. | P. |
|---|---|---|---|
| (a) directing them to put Plaintiff in possession of S.No.18/2B of Puttur village, 9 cents in extent free and clear of all claims and objections of the 1st Defendant, declaring that the order of the Revenue Court in favour of the 1st Defendant and all further proceedings upholding it are null and void and not binding on Plaintiff. The value of this relief for purposes of Court fee is estimated at ten times the assessment (0-1-0 x 10) 10 annas. | 0 | 10 | 0 |

(b) for all costs of this suit with interest thereon.

(c) for such other and further reliefs as the Court deems fit to grant.

Dated 4-3-33.

Original plaint verified and signed by Plaintiff and his Vakil Mr. B. Ramachandra Rao also.

(Sd.) B. Ramachandra Rao.

(True Copy)

For Collector.

KMR
9.5.33

Date of Hearing 16-5-33

Subject.

R. F. XXII-A-19—28,004—15-3-32.(6)

FOR MEMBER.

Sri (Sm Kaccara) Pathu
Deed - os 136/32 - Pathu vs -
assignment
~~Appeal~~ - Dgcccc - Saccabo

Read again B. P. No. _____, dated _____ 193

" " " _____, " _____ 193

Read also :-

Register No. — From the A1475, No. _____, dated _____ 193 2

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193

RESOLUTION. (Sri) No. 1434 dated 22-5-1933.

The Board...accepts the defence of the accd and approves the draft written statement submitted by the Collr subject to the following modifications :-

Para 2 omit the words "appertaining to" accd "pure".

Para 3 second sentence - for "paragraph 2" substitute "paragraph 4"

Para 4 Ln. accdccc.

omit the words "including

the secd plot".

Para 9 ... Delete & renumbers the succeeding paras.

renumbered the
Para 6 for, para substitute

the following

" Without a prayer for a declaration of title the suit is not maintainable ; and the court fee paid is not ~~was~~ correct-

16.5.33

17.5.33.